



"Giving" Advice



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For philanthropists wishing to maximize the impact and life of their charitable gifts, the Foundation provides *resources for thoughtful giving*. Using its expertise and personalized services, **Toledo Community Foundation** helps donors transform their philanthropic

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'But That's Not Fair, Dad!'

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By Hugh B. Roberts and Ricci M. Victorio

The atmosphere in the attorney's office was tension. We were trying to resolve a difficult family estate-planning dispute involving siblings active in the dealership and their brother who wasn't.

In exasperation, the brother exclaimed, "All I want is for the deal to be fair."

OK, but it became clear over the last few months, the only way he defines fair is: "Fair for me." And unfortunately, that's the way the other family members define fair.

The issue of fairness is at the heart of problems auto dealers and their families face with estate and succession planning.

We hear this often: "That's not fair! My brother expects me to do all the work while he gets equal pay."

And: "My parents expect me to run the business for the sake of the whole family—this is a father-son business, but my siblings think it is a family business."

And: "My father won't retire. I'm 52. When do I get my chance?"

And: "My children want to push me out. I built the business, not them."

And we hear these questions: "Why won't my son run the business the

impulse to measurable community impact. Beyond the gifting of assets, the Foundation helps donors identify issues of importance to them and *inspires engagement* with community organizations addressing these issues, thereby maximizing the impact of charitable gifts and creating a greater sense of fulfillment.

way I did?" "Why can't my children appreciate what I've done for them?" "Why won't my children work as hard as I did?"

Sound familiar? Let's focus on finding solutions to three common problems.

Equal Is Not Fair

Most parents don't want to appear to be playing favorites with their children. This often leads to estate distribution plans treating everyone equally, which can be extremely unfair.

For instance, we met with one dealer who had set up his estate plan to give his children equal shares of his store, a C-corporation. Two of his children were active in the business. His daughter was not.

We told him that in a few months the daughter will have this conversation with her brothers:

"I own a third of the stock—when do I get some money?"

"You don't."

"But you're getting paid."

"That's because we work in the business."

"But my stock is worth millions of dollars."

"We don't pay dividends."

"So when do I get money?"

"When we sell the store."

"When are you selling?"

"We aren't!"

"But that's not fair!"

The way to avoid this problem is to design your plan so everyone gets "meaningful" assets, usually defined as "income-producing assets."

Giving stock to a child who is not active in the dealership, usually results in allegations of unfairness. Either the inactive child feels they are deserving of more, or the children working in the business feel they are carrying the burden of the whole family.

Stock It To Me

We hear this sometimes:

"I had to buy the stock from my dad, and so must my son."

"But dad, that's not fair, the stock is worth 10 times what you paid for it."

Clearly the dealer knows there is value in having to pay for the stock. So the issue is how to accomplish this, while making it affordable.

This involves addressing many issues, including, how much money does dad want and need to come from the transfer of his stock and when he is willing to give up control of the dealership.

One planning solution involves a combination of selling stock and the use of gifting to make the transfer affordable, while providing the dealer with the money he needs and wants. The following can be done all at once or over a period of years.

Step One: Sell up to 49 percent of the stock using discounted values since this involves the gift of a minority share of stock. The sale could be accomplished via the use of an IDGIT (Intentionally Defective Grantor Income Trust) to avoid the dealer having to pay capital gains tax.

Step Two: Gift additional stock utilizing a series of GRATs (Grantor Retained Annuity Trusts) which give the dealer additional income over the life of the trusts and can be designed so that the dealer pays little or no gift tax.

Since the dealer must live out the term of the trust for the stock to pass to children tax efficiently, careful attention must be given to the number of years chosen and the design of the trusts.

By utilizing GRATs, the dealer can determine how long he wants to retain control of the dealership. If the answer is "until I die," the stock transferred can be non-voting. (These transactions must be done with your attorney and accountant.)

What does the dealer accomplish? Fairness for himself and his kid.

The son or daughter pays for the stock, but on an affordable basis. The dealer receives income he needs for his lifestyle. He determines when he is willing to relinquish control. The dealer's child knows when he or she will receive the stock, during his lifetime. Estate, gift and income taxes are minimized.

Equal Pay, Unequal Work

Here's another one estate planners hear from dealership family members:

"I'm the one running the business, but my siblings all get a piece of the action."

Sometimes there are several of the dealer's children active in the dealership and all are paid the same, despite different contributions and responsibilities. This is unfair to the son or daughter carrying the greatest load.

Often this is the result of the parents wanting all of their children to have nice homes, lifestyle, etc. To address this, you need to determine that pay will be based on services rendered, not family standing or economic needs. If you want to help your children, do so with personal assets, not through the business.

Another scenario recognizes that if you want your children to be equal partners, they must contribute equally in terms of time, effort and capabilities. Since this is rarely the case, your estate plan needs to address the tough decision that the stock will be shared equally if your children contribute equally within the family business.

Dealing with tough family issues and disputes over "fairness" is not what you anticipated when you bought your first dealership long ago.

But there are ways to make dealership succession work, while keeping family disputes at a minimum. You'll be thankful you did it right. And your kids will thank you.

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